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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 574

GENERAL MOTORS ACCEPTANCE CORPORATION ET AL.

v.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court did not render an opinion in any of the four cases here involved. The certificate of the Circuit Court of Appeals is not reported.

JURISDICTION

The certificate of the Circuit Court of Appeals was filed in this Court on December 14, 1931. (R. 5.) The jurisdiction of this Court rests upon Section 239 of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS CERTIFIED

The questions certified are as follows (R. 3–4):

1. Does Section 26 of Title II of the National Prohibition Act repeal by implication and render inoperative in liquor importation and transportation cases the forfeiture provisions of the customs laws, in so far as offending vehicles are concerned? Or, putting the question in another form:

2. Do the mandatory provisions of Section 26 of the National Prohibition Act apply when the automobile has been seized while in the act of transporting intoxicating liquor across the border and some distance into the United States?

3. May the government, in such a case, ignore such mandatory provisions, arrest the driver, and elect to forfeit the automobile under the customs laws?

4. Is the record in the criminal case wherein the driver pleaded guilty of violating the customs laws (Tariff Act of 1930) admissible in the separate forfeiture proceedings wherein the intervener is the only party appearing, for the purpose of showing unlawful importation by the automobile, or for any other purpose?

STATEMENT

The facts of the four cases here involved are set forth in the certificate as follows (R. 1–3):

The record presents four consolidated automobile forfeiture cases in which the same disputed legal questions are involved.

On four different dates during July and August, 1930, the four automobiles whose forfeiture is in issue were seized at ports of entry on the Mexican border, each vehicle having liquor concealed therein. Three of the cars were seized at San Ysidro, California, and the fourth at Calexico, California. Each car was observed crossing the international boundary line from Mexico and traveling some distance thereafter in the United States, and in each instance the concealed liquor was discovered at an official stopping place of the United States Customs Service. The seizures were effected by customs officers.

All four drivers of the cars were arrested. Each was charged with violations of the Tariff Act of 1930; namely, unlawfully importing liquor into the United States, and knowingly concealing and facilitating the transportation of such liquor. Each indictment alleged failure to obtain a permit, failure to pay duties, and failure to make entry at the custom house. The four defendants entered pleas of guilty to the first count, which charged importation, and were sentenced by the court. In each case, the remaining count was dismissed.

A libel of information *in rem* was filed by the United States Attorney against each automobile, claiming its forfeiture under the provisions of Sections 3061 and 3062 of the Revised Statutes. (19 U. S. C. 482 and 483.) In three of the cases the General Motors Acceptance Corporation intervened

as owner of the attached automobiles, and in the other case the vehicle was claimed by the Howard Automobile Company. All the interveners set up proof of ownership, averred that they were innocent of any illegal acts in which the vehicles may have been involved, and prayed the court to dismiss the libels, contending that the Government's sole remedy was under Section 26, Title II, of the National Prohibition Act. (27 U. S. C. 40.)

In each case, it was stipulated that the liquor alleged to have been found in the automobile was intoxicating in fact and fit for beverage purposes. It was further stipulated, subject to the objection by the libelant that such a purported defense was incompetent, irrelevant, and immaterial, that neither the seller nor the intervener had any notice of the illegal use, or intended illegal use, of the automobile.

The Government offered in evidence at the forfeiture proceedings the judgment roll, consisting of the indictment and sentence, in the criminal cases, at which, as stated above, pleas of guilty had been entered. The intervener in each case objected to the introduction of this judgment roll, on the ground that it was incompetent, irrelevant, and immaterial; that no proper foundation had been laid; that the roll was not binding upon the intervener; and that it did not show that the intervener was a party to the criminal action or had notice of it. The objections were overruled and the records were

admitted in evidence, to which the respective interveners duly excepted.

Testimony of customs officers showed that the four automobiles were driven across the international boundary some distance into the United States before being searched and seized.

The District Court entered decrees of forfeiture in all four cases, finding that each automobile "was engaged in smuggling dutiable merchandise into the United States in violation of the customs laws thereof."

STATUTES INVOLVED

These are set forth in the Appendix, *infra*, pp. 35–42.

SUMMARY OF ARGUMENT

Section 26, Title II, of the National Prohibition Act does not repeal the forfeiture provisions of Sections 3061–3062 of the Revised Statutes in cases involving both the unlawful importation and transportation of intoxicating liquor.

The enforcement provisions of the customs laws provide a flexible and comprehensive system of laws well adapted to govern the importation of merchandise of all kinds. The Tariff Acts of 1922 and 1930, passed subsequently to the enactment of the National Prohibition Act, define the word "merchandise" as including commodities the importation of which is prohibited. Both Acts provide for duties on intoxicating liquors, and the penalty and forfeiture provisions of both unquestionably apply

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to intoxicating liquor, as well as to any other merchandise the importation of which is forbidden.

On the other hand, in the National Prohibition Act Congress did not provide completely or comprehensively for the control of unlawful importations of liquor. Thus, that Act contains no specific provision for the forfeiture of vehicles used in the unlawful *importation* of intoxicating liquors.

Implied repeal is a matter of intent. By making adequate and inclusive provisions in the customs laws for the enforcement of the law against unlawful importation of intoxicating liquors, by failing to provide complete control of liquor importations in the National Prohibition Act, and by expanding the facilities of the customs and coast guard services in order to handle liquor importation cases, Congress has indicated an intent that the forfeiture provisions of the customs laws are to be available in cases involving unlawful liquor importations.

The decision of this Court in *Richbourg Motor Company* v. *United States*, 281 U. S. 528, does not govern the instant case. There the Court was dealing with the forfeiture provisions of an internal revenue law which had originally been enacted with reference to a lawful business which subsequently became unlawful, and the Court held that the mandatory provisions of Section 26 of the National Prohibition Act impliedly repealed the forfeiture

provisions of the internal revenue law. The instant case involves the forfeiture provisions of the customs laws which expressly applied to the importation of merchandise the importation of which was forbidden. The forfeiture provisions of these laws are as mandatory as those in Section 26. If they are in conflict the former must be regarded as controlling in view of legislative enactments since the National Prohibition Act.

The substance of the offense involved in the *Richbourg case* was the unlawful transportation of intoxicating liquors. The substance of the offense involved in the instant case is the unlawful importation of the intoxicating liquors, the transportation being only incidental to the importation.

The decision of the Court in the *Richbourg case* may have been influenced by the fact that under Section 26 of the National Prohibition Act the rights of innocent owners and lienors were protected, whereas such rights were not protected under the provision of the internal revenue law in question. The customs laws involved in the instant case protect the rights of innocent owners and lienors by an administrative adjudication which is in substance equivalent to the protection furnished innocent owners under Section 26.

The same reasoning which would sustain a holding that the forfeiture provisions of Sections 3061–3062 of the Revised Statutes are impliedly repealed

by Section 26 would probably apply to cases where other forfeiture provisions of the customs laws are involved, and likewise to forfeiture provisions in the navigation laws. We submit that Congress did not intend Section 26 to supersede all such statutory provisions wherever the offense involved happened to occur simultaneously or in conjunction with an illegal transportation of intoxicating liquor. Moreover, such a holding would result in serious administrative difficulties.

No sufficient basis exist in the facts stated which would either require or permit an answer to the fourth question certified.

ARGUMENT

Points I and II of this brief relate to the first three questions certified by the Circuit Court of Appeals, which present substantially the same issue. Point III relates to the fourth question certified by the Circuit Court of Appeals, which involves an unrelated issue.

I

CONGRESS HAS MANIFESTED A CLEAR INTENTION THAT THE FORFEITURE PROVISION OF THE CUSTOMS LAWS SHOULD BE APPLICABLE TO VEHICLES SEIZED BY CUSTOMS OFFICERS IN THE ACT OF TRANSPORTING INTOXICATING LIQUOR ACROSS THE INTERNATIONAL BORDER INTO THE UNITED STATES

The vehicles involved in the instant case were seized by customs officers at official stopping places of the customs service while in the acts of both *importing* and *transporting* intoxicating liquor. Their forfeiture was sought under Sections 3061 and 3062 of the Revised Statutes (pp. 35–36, *infra*) which provide for the forfeiture of all vehicles by which merchandise shall have been introduced into the United States contrary to law. Concededly the facts bring the seized vehicles within the forfeiture provisions of Sections 3061 and 3062 unless the United States is precluded from proceeding under such sections by reason of Section 26, Title II, of the National Prohibition Act (pp. 37–38, *infra*), which provides for the forfeiture of vehicles seized while *transporting* intoxicating liquor in violation of the law.

Whether the forfeiture provisions of Sections 3061–3062 were superseded by Section 26 of the National Prohibition Act and, if so, whether they still remain superseded, are, of course, matters of legislative intent. Many decisions of this Court establish that repeal of statutes by implication is not

favored. Of course when a later Act covers the whole subject of an earlier one and shows plainly that it was intended as a substitute for the first, it will operate as a repeal. *King* v. *Cornell,* 106 U. S. 395 But where an affirmative statute contains no expression of a purpose to repeal a prior law, it will not have the effect of repeal, unless the two are in irreconcilable conflict and unless the later one covers the whole ground and is plainly intended as a substitute for the former. The courts must, if possible, give effect to both laws. *Wood* v. *United States,* 16 Pet. 342; *United States* v. *Tynen,* 11 Wall. 88; *Henderson's Tobacco,* 11 Wall. ~~Wenie~~ 652; *Red Rock* v. *Henry,* 106 U. S. 596; *Frost* v. *Wenie,* 157 U. S. 46; *United States* v. *Greathouse,* 166 U. S. 601; *United States* v. *Lee Yen Tai,* 185 U. S. 213; *Maul* v. *United States,* 274 U. S. 501.

Light as to the legislative intent with respect to the applicability of the customs laws to the importation of intoxicating liquors is found in a consideration of the scope of the customs laws and of the National Prohibition Act.

From the beginning of the Federal Government the customs laws have provided a complete system for regulating the importation into the United States of merchandise of every description. The fifth statute enacted by the First Congress at its first session instituted the administrative customs system. Act of July 31, 1789, c. 5, 1 Stat. 29. This law was succeeded by the Act of August 4, 1790, c.

35, 1 Stat. 145, and then by the Act of March 2, 1799, c. 22, 1 Stat. 627, which remained in force for many years. In recent years the administrative provisions of the customs laws have been restated in the Tariff Act of 1922 and the Tariff Act of 1930, but it is noteworthy that few material changes have been made. In the main the system is one that has been uniform and continuous. It is flexible in its application, well suited to control the importation of merchandise of every description, and adaptable to the laws relating to specific kinds of merchandise which may at the time be in effect.

One change should be noted. The earliest acts were applicable almost entirely to vessels and to merchandise imported therein. Later it became necessary to broaden the administrative provisions so as to include vehicles, the most noteworthy amplifying statute being the Act of July 18, 1866, c. 201, 14 Stat. 178, Section 3 of which contained the vehicle forfeiting provisions which afterwards became Sections 3061–3062 of the Revised Statutes and which are still in effect.[1]

[1] It does not appear why these sections were not reenacted in the Tariff Act of 1922 or the Tariff Act of 1930, when other sections of the Revised Statutes were so reenacted. It can not be disputed, however, that they continued in effect. It is significant that the Tariff Act of 1922, which was subsequent to the National Prohibition Act, did not repeal these sections although it expressly repealed many sections of the Revised Statutes immediately anterior and posterior to Sections 3061–3062.

The purpose of the administrative customs laws has continuously been not only to insure the collection of revenue but also to limit or prevent entirely the introduction of certain merchandise into the United States. In fact, the collection of revenue need not be an element in sound customs administration, and it is not a new thing to have customs regulations apply to the importation of merchandise absolutely prohibited.[2]

When the Eighteenth Amendment became effective some question arose as to whether intoxicating liquor came within the general term "merchandise," as used in the customs enforcement laws. Thereupon Congress, to remove any doubt, declared in both the Tariffs Acts of 1922 and 1930 (Section 401 of each Act) that—

> The word "merchandise" means goods, wares, and chattels of every description and *includes merchandise the importation of which is prohibited.* (Italics ours.)

But this definition was only declaratory of what the law had always been. *Harford* v. *United States,* 8 Cranch 109; *United States* v. *Sischo,* 262 U. S. 165; *Bookbinder* v. *United States,* 287 Fed. 790 (C. C. A. 3d), certiorari denied, 262 U. S. 748.

Thus, when the Eighteenth Amendment became a part of the Constitution and the National Prohibition Act became law, there existed a well-settled

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[2] See, for example, Sections 9, 12, and 14 of the Tariff Act of 1909, 36 Stat. 11, 86, and Sections G, H, and I of Section IV of the Tariff Act of 1913, 38 Stat. 114, 195.

body of customs law which had been worked out by experience and which was well adapted to control the importation of merchandise generally, including prohibited importations. That Congress did not intend the provisions of the customs laws, so far as they are applicable to intoxicating liquors, to be superseded by the National Prohibition Act, is indicated by the fact that in that Act Congress did not completely cover the control of liquor importations.

The Eighteenth Amendment prohibited—

> the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States * * * for beverage purposes * * *.

A distinction was made in terms between *transportation of intoxicating liquors within* and *the importation thereof into* the United States. In the National Prohibition Act the distinction between transportation and importation was continued, Section 3 of that Act making criminal the following acts with respect to intoxicating liquors: (1) Manufacturing, (2) selling, (3) bartering, (4) transporting, (5) importing, (6) exporting, (7) delivering, (8) furnishing, and (9) possessing.[4]

But while the National Prohibition Act makes it an offense to *import* as well as to *transport* liquors, its only forfeiture provision applying to vehicles and vessels (Section 26) is effective only in

[4] See also the Act of March 2, 1929, c. 473, 45 Stat. 1446.

transportation cases. At no place in the Act is there declared a forfeiture of vessels or vehicles used in *importation.* Furthermore, the Act's effect *in rem* in transportation cases is much restricted in scope and applies only where some person is arrested in the commission of the offense. In reality the action under Section 26 against a vessel or vehicle is not an *in rem* action at all. Forfeiture does not follow proof of an offense *in rem.* It follows as one of the consequences of a conviction *in personam.*

It will be observed further that none of the provisions of the National Prohibition Act which impose a forfeiture on contraband liquors in specific terms applies to liquors which have been *imported.* This is true both of Section 25 and Section 26, although those sections do declare the forfeiture of liquors generally which are illegally possessed or transported.

It may be argued, of course, that transportation includes importation. That is true only in a limited sense. If transportation and importation are identical or if one includes the other, no purpose was served by making them separate criminal offenses in Section 3 of the Act, or distinguishing between them in the Eighteenth Amendment.

Our conclusion is that the National Prohibition Act falls far short of dealing comprehensively and exclusively with the unlawful importation of intoxicating liquor, particularly in its *in rem* phases.

There are other evidences of the congressional intent that the customs laws are to be available for use in the field of liquor importation.

Imported liquors were subject to duty when the National Prohibition Act became effective (Schedule H, Tariff Act of 1913; 38 Stat. 135) and the duty was not eliminated by that event. *United States* v. *Bookbinder,* 281 Fed. 206 (E. D. Pa.). Such duties were reenacted in Schedule 8 of the Tariff Act of 1922 (42 Stat. 897) and in Schedule 8 of the Tariff Act of 1930 (46 Stat. 639). Congress was careful to state, however, that such duties should not be construed as in any manner limiting or restricting the National Prohibition Act. (Par. 801, Schedule 8, Tariff Act of 1922; Par. 801 (a), Schedule 8, Tariff Act of 1930. Moreover, it is significant, we believe, that in both of the latest Tariff Acts (Par. 813, Schedule 8, Tariff Act of 1922, 42 Stat. 898; Par. 814, Schedule 8, Tariff Act of 1930, 46 Stat. 640) Congress provided that—

> any such wines, spirits, or other liquors or articles imported or brought into the United States without a permit shall be seized and forfeited in the same manner as for other violations of the customs laws.

Such language is not consistent with an understanding on the part of Congress that the National Prohibition Act was complete and adequate in itself or that it was intended to provide alone the enforcement of the law against liquor smuggling.

If Congress considered that the National Prohibition Act alone was adequate to enforce the con-

stitutional prohibition against the importation of beverage liquor, then there is no reasonable explanation for the increased appropriations that have been made since the Eighteenth Amendment to provide for the Customs and Coast Guard services.[4] The appropriation Acts set forth in the footnote and others which might be cited furnish contradiction of any contention that Congress intended the National Prohibition Act to cover the entire field of liquor law enforcement. In this connection it should be borne in mind that Coast Guard officers are officers of the Customs (*Maul* v. *United States*, 274 U. S. 501), and neither they nor the regular customs officers have express authority to act as prohibition agents.

Of further significance is the Act of March 3, 1927, c. 348, 44 Stat. 1381, whereby Congress created in the Treasury Department a Bureau of Customs and a Bureau of Prohibition. Section 2 (c)

[4] The following table shows the regular annual appropriations made for these two services for the years 1920 to 1932, inclusive:

Fiscal year	Coast Guard (excluding headquarters expenses)	Bureau of Customs	Statute references
1920	$7,049,000.00	$10,085,000.00	41 Stat. 171, 174.
1921	9,499,940.00	11,457,000.00	41 Stat. 880, 883.
1922	10,171,857.80	11,435,000.00	41 Stat. 1373, 1376.
1923	9,756,688.50	11,528,500.00	42 Stat. 378, 373.
1924	11,328,100.60	12,318,500.00	42 Stat. 1099, 1094.
1925	10,516,944.00	13,874,140.00	43 Stat. 73, 69.
1926	20,377,835.00	16,656,200.00	43 Stat. 772, 769.
1927	24,083,140.00	17,948,000.00	44 Stat. 145, 141.
1928	29,340,000.00	17,950,000.00	44 Stat. 1036, 1032.
1929	28,640,570.00	19,180,000.00	45 Stat. 173, 167.
1930	29,372,616.00	21,685,000.00	45 Stat. 1037, 1033.
1931	31,781,156.00	22,952,160.00	46 Stat. 345, 339.
1932	33,606,422.00	26,963,600.00	46 Stat. 1226, 1221.

Attention is called also to the First Deficiency Act of 1924 (43 Stat. 33, 50) wherein Congress authorized the expendi-

of that Act (p. 42, *infra*) relieves customs officers of any duty to execute the provisions of the National Prohibition Act. Presumably Congress must have assumed that such officers were charged with the duty of preventing liquor smuggling under the customs laws, because it has never equipped prohibition agents to operate in the customs field.

Accordingly, we submit that the customs laws are not inconsistent with the National Prohibition Act, and that it is the clear intent of Congress that they should be available in their own field where applicable for the control of liquor importation.

II

THE RICHBOURG DECISION DOES NOT SUSTAIN THE CONTENTION THAT SECTION 26, TITLE II, OF THE NATIONAL PROHIBITION ACT REPEALS BY IMPLICATION THE FORFEITURE PROVISIONS OF THE CUSTOMS LAWS WITH RESPECT TO VEHICLES SEIZED IN LIQUOR IMPORTATION AND TRANSPORTATION CASES

The intervener-appellant contends that, not by any force of their own but by reason of Section 5 of the Willis-Campbell Act, Sections 3061–3062 of the

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ture of $12,194,900.00 for additional motor boats and equipment for the Coast Guard; also to the Act of April 21, 1924 (43 Stat. 105), whereby the Coast Guard personnel was temporarily increased. Committee reports and hearings show clearly that liquor smuggling was the basis of both. (See House Report No. 228, 68th Cong., 1st Sess.; Hearing before Committee on Interstate and Foreign Commerce, 68th Cong., 1st Sess., on H. R. 6815; Senate Report No. 293, 68th Cong., 1st Sess.) See also the Act of June 10, 1926 (44 Stat. 725), whereby Congress authorized ten new cutters for the Coast Guard, to cost nine million dollars. Committee reports and hearings on this bill likewise show that the expansion of Coast Guard facilities was necessitated by liquor smuggling.

Revised Statutes, in force when the National Prohibition Act was enacted, were continued in force, but only to the extent that such sections were not in direct conflict with the National Prohibition Act; that by Section 26 of the last named Act Congress has provided the complete machinery for the forfeiture of all vehicles seized in transporting intoxicating liquor; that Sections 3061–3062 are directly in conflict with Section 26 whenever a vehicle is seized in the act of *importing* intoxicating liquor if it is at the same time engaged in *transporting* intoxicating liquor, and that to that extent Sections 3061–3062 are superseded by Section 26.

It is contended that the situation in the instant case is in substance the same as that before this Court in *Richbourg Motor Co.* v. *United States,* 281 U. S. 528. That case held that where a person discovered in the act of transporting liquor unlawfully has been arrested and the transporting vehicle seized under Section 26, proceedings to forfeit the vehicle must be taken under that section, and may not be taken under Section 3450 of the Revised Statutes, which provides for the forfeiture of vehicles used in the removal or concealment of any commodity with intent to deprive the United States of any tax upon it.

Prior to the *Richbourg case* the lower courts quite generally applied the customs laws to forfeitures of vehicles for unlawful importation of liquor. Since that decision there has been a wide

divergence of opinion in cases involving the forfeiture of vessels or vehicles. Cases have arisen not only under the customs laws but also under the navigation laws. The decisions of the lower courts can not be reconciled.[5] Without attempting to discuss in detail the numerous cases, we submit that those cases present the better reasoned view which hold that the forfeiture provisions of the customs and navigation laws are still applicable in cases involving the unlawful importation of intoxicating liquors, notwithstanding the fact that the offending vessel or vehicle is engaged in transportation of intoxicating liquor at the time of seizure.[6]

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[5] It has been the purpose of the Government to bring before this Court as many different phases of the problem as possible. This accounts for the Government's petitions for writs of certiorari in *United States* v. *Commercial Credit Co.*, *United States* v. *Two-masted Auxiliary Schooner Ruth Mildred, etc.*, and *United States* v. *Wilfred Corriveau*, respectively, Nos. 734, 795, and 825, the present term. It also explains the Government's failure to oppose the petition in *General Import and Export Co., Inc.*, v. *United States*, No. 811, the present term.

[6] *The Pilot*, 43 F. (2d) 491 (C. C. A. 4th); *United States* v. *One Reo Coupe Automobile*, 46 F. (2d) 815 (D. Mass.); *United States* v. *One Fargo Truck*, 46 F. (2d) 171 (S. D. Tex.), reversed, 53 F. (2d) 977 (C. C. A. 5th); *The Daisy T.*, 48 F. (2d) 370 (D. Del.); *United States* v. *James Hayes et al.*, 52 F. (2d) 977 (E. D. N. Y.); *The Sebastopol*, decided March 9, 1932 (C. C. A. 2d), now pending on certiorari, No. 811, October Term, 1931, *sub nomine*, *General Import and Export Co.* v. *United States*. See also *The Motor Boat—The Thorndyke*, 53 F. (2d) 239 (D. N. J.); *Corriveau* v. *United States*, 53 F. (2d) 735 (C. C. A. 1st), now pending on certiorari, No. 825, October Term, 1931; *Maniscalco* v. *United States*, 53 F. (2d) 737 (C. C. A. 1st); *United States* v.

While the *Richbourg case* holds that where transportation is involved and the driver is arrested the forfeiture provisions of Section 3450 of the Revised Statutes are impliedly repealed by Section 26 of the National Prohibition Act, that decision does not warrant the conclusion that the forfeiture provisions of Sections 3061–3062 have been superseded by Section 26. The United States contends that the situation before the court in the *Richbourg case* is not fairly comparable to the situation here presented; that the provisions of the customs laws here involved are just as mandatory as those in Section 26 of the National Prohibition Act, and that if the two laws are to be regarded as in conflict, legislative action since the enactment of the National Prohibition Act establishes the legislative intent that the customs laws should continue to be available in liquor importation cases.

American Motor Boat K–1231, 54 F. (2d) 502 (C. C. A. 2nd); *The Standard Coaster*, 55 F. (2d) 306 (E. D. N. Y.).

The opposite conclusion has been reached in the following cases: *United States* v. *Ford Coupe Automobile*, 43 F. (2d) 212 (S. D. Fla.); *United States* v. *One Studebaker Automobile*, 45 F. (2d) 430 (D. Ariz.); *The Ruth Mildred*, 47 F. (2d) 336 (S. D. N. Y.), affirmed March 9, 1931 (C. C. A. 2d), now pending on certiorari, No. 795, October Term, 1931, *sub nomine*, *United States* v. *Two-masted Auxiliary Schooner Ruth Mildred, etc.*; *Colon* v. *Hanlon*, 50 F. (2d) 353 (C. C. A. 1st); *Commercial Credit Co.* v. *United States*, 53 F. (2d) 977 (C. C. A. 5th), now pending on certiorari, No. 734, October Term, 1931; *United States* v. *One Buick Coupe*, 54 F. (2d) 800 (S. D. Fla.); *United States* v. *Wilfred Corriveau*, decided February 25, 1932 (C. C. A. 1st), pending on petition for certiorari, No. 825, October Term, 1931.

In the first place there is no essential similarity between the relationship of Section 3450 of the Revised Statutes to Section 26 of the National Prohibition Act and the relationship of Sections 3061–3062 of the Revised Statutes to Section 26.

Section 35 of the National Prohibition Act provides in part:

> All provisions of law that are inconsistent with this Act are repealed only to the extent of such inconsistency, and the regulations herein provided for the manufacture or traffic in intoxicating liquor shall be construed as in addition to existing laws.

Shortly after the National Prohibition Act became effective the Government, relying upon Section 35, attempted to prosecute certain persons for various alleged violations of the internal revenue statutes. The defendants in those cases contended that the statutes were inconsistent with and therefore impliedly repealed by the National Prohibition Act, and this contention was sustained in *United States* v. *Yuginovich*, 256 U. S. 450. Thereafter Congress enacted the Act of November 23, 1921, c. 134, 42 Stat. 222, 223, the Willis-Campbell Act, Section 5 of which provided in part:

> That all laws in regard to the manufacture and taxation of and traffic in intoxicating liquor, and all penalties for violations of such laws that were in force when the National Prohibition Act was enacted, shall be and continue in force, as to both beverage and nonbeverage liquor, except such provisions

> of such laws as are directly in conflict with any provision of the National Prohibition Act or of this Act; * * *.

Thereafter, in *United States* v. *Stafoff*, 260 U. S. 477, it was held that the statutes which had been held impliedly repealed in the *Yuginovich case* were enforceable since they were not in direct conflict with the National Prohibition Act.

The *Yuginovich* decision has been cited by some courts as authority for sustaining the assertion of conflict between the National Prohibition Act and the customs laws, but we believe it is not in point. As this Court pointed out in *United States* v. *Sischo*, 262 U. S. 165, 167:

> There is less contradiction between the requirement of the manifest and the prohibition of the import than there is between such a prohibition and a tax.

The internal revenue laws construed in the *Yuginovich case* originally regulated the manufacture of liquor as a lawful enterprise, and when such manufacture for beverage purposes became unlawful by constitutional mandate it was held inconsistent to apply to such an unlawful enterprise the prior regulations pertaining to a lawful business. On the other hand, as has already been pointed out, the customs enforcement laws have always been general and flexible in their application. They are adaptable to the importation of all classes of merchandise whether at the time conditionally admissible or *absolutely prohibited.*

There are other distinctions between the *Richbourg case* and the instant case. In construing Section 26, Title II, of the National Prohibition Act, in the *Richbourg case* this Court pointed out the mandatory wording of the section and concluded that that which was mandatory in form was also mandatory in fact.

The instant case involves customs laws which were and are no less mandatory than the National Prohibition Act in so far as arrests, seizures, prosecutions of offenses, and forfeitures are concerned. The mandatory duty placed upon officers of the customs to enforce the forfeitures declared by Sections 3061–3062 of the Revised Statutes is clearly indicated by Sections 602–604 (pp. 39–40, *infra*) of the Tariff Act of 1922.[1]

Section 602 provides that it shall be the duty of any officer authorized to make seizures of merchandise for violation of the customs laws to report every such seizure immediately to the collector of the district in which the violation occurred and to turn over to such collector any vessel, vehicle, or merchandise seized by him. Section 603 provides that whenever a seizure of merchandise has been made for violation of the customs laws it shall be the duty of the collector to report the same to the Solicitor of the Treasury and to the United States

[1] These sections were substantially a reenactment of prior laws in force when the National Prohibition Act was enacted. See R. S. Sections 3083–3087 and Section 15, Act of June 22, 1874, c. 391, 18 Stat. 189.

Attorney. Section 604 directs that it shall be the duty of every United States Attorney immediately to inquire into the facts of cases reported by collectors and, if it appears probable that any fine or forfeiture has been incurred, forthwith to cause the proper proceedings to be commenced for the recovery of such fine or forfeiture.[8]

The forfeiture provisions of the customs law being no less mandatory than those of Section 26, which shall prevail in a situation where each might be applicable were it not for the other? Ordinarily it is the later of two inconsistent statutes which prevails. But while Section 26 of the National Prohibition Act was enacted subsequently to Sections 3061–3062, the mandatory provisions of Sections 602–604 of the Tariff Act of 1922 and similar provisions of the Tariff Act of 1930[9] were enacted after the National Prohibition Act and the Willis-Campbell Act. Moreover, both of the subsequent Tariff Acts of 1922 (42 Stat. 897, 990) and 1930 (46 Stat. 590, 639, 763) contain a provision that "all laws and parts of laws inconsistent with the provisions of this Act are hereby repealed."

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[8] See also Section 616 of the Tariff Act of 1922 which makes it a felony for any officer of the United States, except the Secretary of the Treasury, to relieve or attempt to relieve any person, vessel or vehicle, or merchandise from any fine or forfeiture incurred under the customs laws. (P. 41, *infra.*)

[9] See Sections 602–604 of the Tariff Act of 1930.

Accordingly, if there is a direct conflict between Section 26 and the forfeiture provisions of the customs laws, the latter, being the later expression of Congress should prevail. This conclusion would seem to be squarely sustained by the decision of this Court in *Callahan* v. *United States,* No. 576, present term, decided April 11, 1932.

Furthermore, as pointed out above (pp. 8–17, *supra*), Congress has in other ways since the enactment of the Prohibition Act manifested its intention that the customs laws shall be applicable to importations of intoxicating liquors.

A further important distinction exists between the instant case and the *Richbourg case.* In the latter case there was no evidence that the intoxicating liquors found in the vehicles had been unlawfully introduced into the United States, nor was there evidence of removal, deposit, or concealment with intent to defraud the United States of a tax upon the merchandise *except as such removal or concealment is necessarily involved in any unlawful transportation of intoxicating liquors.* The Court stated that the question presented was whether "proceedings for the forfeiture of a vehicle seized under Section 26 of the National Prohibition Act, as one used for unlawful transportation of intoxicating liquor, but where there has been no prosecution for that offense, must be had under that section,

* * *." It is our view that this Court in the *Richbourg case was concerned with the substance of the offense that had been committed with the use of the automobile,* and that its opinion proceeds upon the assumption that the vehicle in question was seized under the National Prohibition Act as one used for the unlawful transportation of intoxicating liquors.

In the instant case the substance of the offense was the unlawful importation and the transportation was merely incidental. Moreover, the character of the merchandise was wholly immaterial so long as it was merchandise which was introduced into the United States contrary to law. The case at bar involves automobiles seized by customs officers, charged with the duty of preventing smuggling of merchandise into the United States, at ports of entry on the Mexican border. Each car was actually observed crossing the international boundary line and in each concealed liquor was discovered at an official stopping place of the customs service. The driver of each car was charged with violations of the Tariff Act of 1930 and each defendant pleaded guilty to the count of the indictment which charged importation. Forfeiture of the automobiles was sought under the provisions of the customs laws and in each case the District Court found that the vehicle "was engaged in smuggling dutiable merchandise into the United States in violation of the customs laws thereof." That the ele-

ment of transportation was present is conceded but, as pointed out in *United States* v. *One Reo Coupé Automobile,* 46 F. (2d) 815, 818 (Mass.)—

> It is impossible to conceive of any case of smuggling where the element of transportation would not have been at some time present, but here the substantive crime was a violation of the customs laws * * *.

See *United States* v. *One Buick Coupe,* 54 F. (2d) 800 (S. D. Fla.).

In the *Richbourg case* the Court may have been influenced by the fact that under Section 26 of the National Prohibition Act the rights of innocent owners and lienors were protected while such rights were not protected under Section 3450. The same consideration seems to have influenced the courts which have found a direct conflict between the forfeiture provisions of Section 26 and Sections 3061–3062. But although the rights of innocent owners and lienors are not conserved under the customs laws by *judicial* determination, it has been the policy of Congress from the beginning of customs legislation to protect innocent interests by *administrative* determination. *The Pilot,* 43 F. (2d) 491 (C. C. A. 4th), *supra.*

At the time the National Prohibition Act became effective the authority of the Secretary of the Treasury to remit forfeitures and penalties incurred under the customs laws was contained in

Section 3078 of the Revised Statutes and Sections 17, 18 and 20 of the Act of June 22; 1874, 18 Stat. 189, 190. These provisions were repealed by the Tariff Act of 1922 and were succeeded by Sections 613 and 618 of that Act (pp. 40, 41, *infra*). Section 618 provides that whenever any person interested in a vessel or vehicle seized for violation of the customs laws files with the Secretary of the Treasury before the sale of such vessel or vehicle a petition for remission of such fine or forfeiture, the Secretary of the Treasury, if he finds that the fine or forfeiture was incurred without wilful negligence and without intention on the part of the petitioner to violate the law, may remit the same upon such terms as he deems reasonable. Section 613 permits any person claiming any interest in a vessel or vehicle forfeited and sold under the customs laws to apply to the Secretary of the Treasury within three months from the date of the sale for a remission of the forfeiture upon a showing that the applicant did not know of the seizure prior to the forfeiture and that the forfeiture was incurred without wilful negligence or intention to defraud on the part of the applicant.

While it may be conceded that the administrative remission of forfeitures under the customs laws is not the exact equivalent of an adjudication by a court, it would seem to be substantially equivalent, since it will be assumed that the executive having full authority to provide relief will exercise his

function in a proper manner. It can not be assumed in forfeiture cases under the customs laws that the rights of innocent claimants can not and will not be preserved. If, as we submit, the rights of innocent claimants are protected by the customs laws substantially as well as under Section 26 of the National Prohibition Act, we see no proper basis for holding that a direct conflict exists because of slightly different consequences of conviction.

Finally there are practical considerations which weigh against the conclusion that Section 26 has superseded the forfeiture provisions of Sections 3061–3062 unless no other reasonable conclusion can be reached.

The same reasoning which is advanced to sustain the assertion of conflict between Section 26 and Sections 3061–3062 would seem to apply, in part, at least, to other forfeiture provisions of the customs laws and to the forfeiture provisions of the navigation laws. (See Sections 453, 460, 585, 586, and 587, respectively, of the Tariff Acts of 1922 and 1930. See also Section 4377 of the Revised Statutes). If all these provisions are held to be superseded by Section 26, and if the National Prohibition Act is to be the sole reliance of the Government for the suppression of liquor smuggling in the transportation cases, the result will be far-reaching along the seacoast and other water frontiers where the Federal police force is composed solely of customs

and coast guard officers. Congress has not seen fit to equip the Bureau of Prohibition to police that field, and moreover, as already pointed out, it has relieved customs officers of any responsibility of enforcing the provisions of the National Prohibition Act.

It is admitted, of course, that a customs or a coast guard officer would come within the term "any officer of the law" as used in Section 26 of the National Prohibition Act (p. 37, *infra*), and that such officer would be obligated to arrest persons found engaged in illegally transporting intoxicating liquor within American waters or near the land boundaries. But to require all subsequent proceedings not only *in personam* but *in rem* to be had under the National Prohibition Act would involve administrative difficulties of an almost insuperable character with the laws in their present state.

To begin with, the Bureau of Prohibition would have no administrative control over customs officers in seeking for illegal transporters of liquor. Moreover, because of the provision contained in Section 2 (c) of the Reorganization Act of 1927 (p. 42, *infra*), the Commissioner of Customs could not direct his subordinates in that activity. This restriction would apply not only along the seacoast but also along the international boundaries.

The custody of seized property would also create a serious administrative problem in liquor importation cases involving an element of transportation. If a customs law or navigation law were not

violated, the Collector of Customs could not be made the custodian of seized vessels or vehicles. (See Sec. 605 of the Tariff Acts of 1922 and 1930, p. 40; *infra.*) Such vessels or vehicles would have to be delivered to prohibition officers. On the other hand, a customs officer seizing illegally imported liquor is bound to treat it as a customs seizure (Tariff Acts of 1922 and 1930—Schedule 8, par. 813) and is required by law to deliver it into the custody of the Collector of Customs.

Other speculative difficulties will occur. In many seizures made in marginal waters the deciding fact determining whether the case should be prosecuted under the customs or the prohibition laws would be the location of the three-mile limit, a line which is often difficult to fix. In *Commercial Credit Co., Inc.* v. *United States, supra,* the Court of Appeals speculated upon a situation where a smuggling vehicle seized by customs officers contained, along with intoxicating liquor, a substantial amount of other contraband merchandise.

We submit that if possible the law should be so construed as to avoid serious administrative difficulties.

III

THE FOURTH QUESTION CERTIFIED SHOULD NOT BE ANSWERED

The fourth question certified is as follows (R. 2):

> Is the record in the criminal case wherein the driver pleaded guilty of violating the

customs laws (Tariff Act of 1930) admissible in the separate forfeiture proceedings wherein the intervener is the only party appearing, for the purpose of showing unlawful importation by the automobile, or for any other purpose?

The necessity for this Court to answer this question does not appear. There is no showing in the certificate that the use of the records in the criminal case was necessary in order to establish the fact that the seized vehicles had been used in the unlawful importation of intoxicating liquor, or to establish any other material fact. In fact, the certificate states that testimony of customs officers showed that the four automobiles which were libeled for forfeiture under Sections 3061–3062 of the Revised Statutes were driven across the international border and further states that they were seized, liquor laden, at ports of entry after they had been observed crossing from Mexico into the United States. It also states that the District Court found that each automobile "was engaged in smuggling dutiable merchandise into the United States." It does not state for what purposes the records of the drivers' pleas of guilty was offered and received in evidence. Whether the drivers had any property interest in the cars at the time they crossed the border or at the time they entered their pleas of guilty does not appear.

For these reasons the fourth question finds no sufficient basis in the facts stated in the certificate

to escape the criticism of "objectionable generality" "admitting of one answer under one set of circumstances and a different answer under another." *White* v. *Johnson*, 282 U. S. 367.

The objection to the fourth question finds support in the state of the authorities. Such records have been received in evidence in forfeiture proceedings in admiralty (*The Potomac*, 8 Wall. 590; *The Kaga Maru*, 18 F. (2d) 295 (W. D. Wash.); *The W. Talbot Dodge*, 15 F. (2d) 459 (S. D. N. Y.)) and by analogy to these cases in forfeiture proceedings where seizure has been made on land (*Dobbins Distillery* v. *United States*, 96 U. S. 395; *United States* v. *One Buick Automobile*, 21 F. (2d) 789 (D. Vt.)). The question in all these cases has, however, turned upon the relation of the person whose admission is offered against the vessel or vehicle sought to be forfeited to the *res*, both at the time of the offense and at the time when the admission was made, whether as owner, master, lessee, or merely as an agent or employee. The certificate in the case does not disclose these relationships. Accordingly the question is merely academic and we submit it should not be answered.

CONCLUSION

We submit that the first and second questions certified by the Circuit Court of Appeals should be answered "*No*," that the third question should be

answered *"Yes,"* and that the fourth question should not be answered.

Respectfully submitted.

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APRIL, 1932.

APPENDIX

STATUTES INVOLVED

Sections 3061 and 3062 of the Revised Statutes (U. S. C., Title 19, Sec. 482–483):

SEC. 3061. Any of the officers or persons authorized to board or search vessels may stop, search, and examine as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial.

SEC. 3062. Every such vehicle and beast, or either, together with teams or other motive power used in conveying, drawing, or

propelling such vehicle or merchandise, and all other appurtenances, including trunks, envelopes, covers, and all means of concealment, and all the equipage, trappings, and other appurtenances of such beast, team, or vehicle, shall be subject to seizure and forfeiture. If any person who may be driving or conducting, or in charge of any such carriage or vehicle or beast, or any person traveling, shall willfully refuse to stop and allow search and examination to be made as herein provided, when required so to do by any authorized person, he shall be punishable by a fine of not more than one thousand dollars, nor less than fifty dollars.

Section 25, Title II, of the National Prohibition Act (Act of October 28, 1919, c. 85, 41 Stat. 305, 315, U. S. C., Title 27, Sec. 39):

SEC. 25. It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in Title XI of public law numbered 24 of the Sixty-fifth Congress, approved June 15, 1917, and such liquor, the containers thereof, and such property so seized shall be subject to such disposition as the court may make thereof. If it is found that such liquor or property was so unlawfully held or possessed, or had been so unlawfully used, the liquor, and all property designed for the unlawful manufacture of liquor, shall be destroyed, unless the court shall otherwise order. No search warrant shall issue to search any private dwelling occupied as such unless it is being used for the unlawful sale of intoxicating

liquor, or unless it is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, or boarding house. The term "private dwelling" shall be construed to include the room or rooms used and occupied not transiently but solely as a residence in an apartment house, hotel, or boarding house. The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process.

Section 26, Title II, of the National Prohibition Act (Act of October 28, 1919, c. 85, 41 Stat. 305, 315—U. S. C., Title 27, Sec. 40):

When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this title in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the

judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken or if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold and the proceeds after deducting the expenses and costs shall be paid into the Treasury of the United States as miscellaneous receipts.

The Tariff Act of 1922, c. 356, 42 Stat. 858, 984, 985, 986, 987:

SEC. 602. *Seizure procedure — Report.* — It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure immediately to the collector for the district in which such violation occurred, and to turn over and deliver to such collector any vessel, vehicle, merchandise, or baggage seized by him, and to report immediately to such collector every violation of the customs laws. (U. S. C., Title 19, Sec. 509.)

SEC. 603. *Same—Facts to report.*—It shall be the duty of the collector whenever a seizure of merchandise has been made for a violation of the customs laws to report the same to the Solicitor of the Treasury, and promptly also to report any such seizure or violation of the customs laws to the United States attorney for the district in which such violation has occurred, or in which such seizure was made, including in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses, and citation of the statute or statutes believed to have been violated, and on which reliance may be had for forfeiture or conviction. (U. S. C., Title 19, Sec. 510.)

SEC. 604. *Same—Prosecution.*—It shall be the duty of every United States district attorney immediately to inquire into the facts of cases reported to him by collectors and the laws applicable thereto, and, if it appears probable that any fine, penalty, or forfeiture has been incurred by reason of such violation, for the recovery of which the institution of proceedings in the United States district court is necessary, forthwith to cause the

proper proceedings to be commenced and prosecuted, without delay, for the recovery of such fine, penalty, or forfeiture in such case provided, unless, upon inquiry and examination, such district attorney decides that such proceedings can not probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case he shall report the facts to the Secretary of the Treasury for his direction in the premises. (U. S. C., Title 19, Sec. 511.)

SEC. 605. *Same—Custody.*—All vessels, vehicles, merchandise, and baggage seized under the provisions of the customs laws, or laws relating to the navigation, registering, enrolling or licensing, or entry or clearance, of vessels, unless otherwise provided by law, shall be placed and remain in the custody of the collector for the district in which the seizure was made to await disposition according to law. (U. S. C., Title 19, Sec. 512.)

SEC. 613. *Disposition of proceeds.*—Any person claiming any vessel, vehicle, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this Act, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Secretary of Commerce if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such cir-

cumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury or the Secretary of Commerce may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. * * *.

(U. S. C., Title 19, Sec. 520.)

SEC. 616. *Compromise of claims.*—It shall not be lawful for any officer of the United States to compromise or abate any claim of the United States arising under the customs laws for any fine, penalty, or forfeiture, and any such officer who compromises or abates any such claim or attempts to make such compromise or abatement, or in any manner relieves or attempts to relieve any person, vessel, vehicle, merchandise, or baggage from any such fine, penalty, or forfeiture shall be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than $5,000 or by imprisonment for a term of not exceeding two years: *Provided*, That the Secretary of the Treasury shall have power to remit or mitigate any such fine, penalty, or forfeiture, or to compromise the same in the manner provided by law. (U. S. C., Title 19, Sec. 529.)

SEC. 618. *Remission or mitigation of penalties.*—Whenever any person interested in any vessel, vehicle, merchandise, or baggage seized under the provisions of this Act, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under

> the customs laws, and with the Secretary of Commerce if under the navigation laws, before the sale of such vessel, vehicle, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, or the Secretary of Commerce, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. * * *. (U. S. C., Title 19, Sec. 532.)

Sections 602, 603, 604, 605, 606, 613, 616, and 618 of the Tariff Act of 1930, c. 497, 46 Stat. 590 (U. S. C. Sup. Title 19, Secs. 1602, 1603, 1604, 1605, 1606, 1613, 1916, and 1918) are substantially identical with the same sections of the Tariff Act of 1922.

Section 2(c) of the Act of March 3, 1927, c. 348, 44 Stat. 1381 (U. S. C. Sup. V, Title 5, Sec. 281a) provides:

> (c) The personnel of the Bureau of Prohibition shall perform such duties as the Secretary of the Treasury or the Commissioner of Prohibition may prescribe, and the personnel of the Bureau of Customs shall perform such duties (other than duties in connection with the administration of the National Prohibition Act, as amended, or any other law relating to the enforcement of the eighteenth amendment), as the Secretary of the Treasury or the Commissioner of Customs may prescribe.

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